



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY
TIDEWATER REGIONAL OFFICE

Matthew J. Strickler
Secretary of Natural Resources

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David K. Paylor
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Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Shore Health Services, Inc.
FOR
Riverside Shore Memorial Hospital
VPDES Permit No. VA0027537**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Shore Health Services, Inc., regarding the Riverside Shore Memorial Hospital, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Discharge" means discharge of a pollutant. 9VAC25-32-10.
5. "DMR" means discharge monitoring report.

6. "Facility" means the Shore Health Services Riverside Shore Memorial Hospital on-site wastewater treatment plant, located at 9507 Hospital Avenue in Nassawadox, Virginia.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
9. "Permit" means VPDES Permit No. VA0027537, which was issued to Riverside Shore Memorial Hospital under the State Water Control Law and the Regulation on December 1, 2017 and which expires on November 30, 2022.
10. "Pollutant" means any substance, radioactive material, or heat which causes or contributes to, or may cause or contribute to, pollution. It does not mean (i) sewage from vessels; or (ii) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes if approved by Department of Mines Minerals and Energy unless the Board determines that such injection or disposal will result in the degradation of ground or surface water resources. 9VAC25-32-10.
11. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
12. "Regulation" means the VPDES Permit Regulation, 9VAC25-31-10 *et seq.*
13. "Riverside" means Riverside Shore Memorial Hospital.
14. "Shore Health Services" means Shore Health Services, Inc. a corporation authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Shore Health Services is a "person" within the meaning of Va. Code § 62.1-44.3.

15. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
16. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
17. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
18. "Va. Code" means the Code of Virginia (1950), as amended.
19. "VAC" means the Virginia Administrative Code.
20. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Shore Health Services owns Riverside. The hospital is no longer operating and is unoccupied, yet other buildings (a retirement home, some others) continue to discharge to the Facility.
2. Riverside is subject to the Permit, which allows Shore Health Services to discharge treated industrial wastewater from the Facility to Outfall 001, in strict compliance with the terms and conditions of the Permit.
3. The Facility discharges to an unnamed tributary to Warehouse Creek, to Nassawadox Creek, Chesapeake Bay, and Atlantic Ocean. Warehouse Creek is listed as impaired for dissolved oxygen and PCB in fish tissue and Nassawadox Creek is listed as impaired for Enterococcus, dissolved oxygen, and PCB in fish tissue, both due to contributors from municipal and industrial point source discharges, wet weather discharges, and wastes from pets and animal feeding operations.
4. Part I.A. of the Permit requires that Riverside monitor, limit, and report, among other pollutants, ammonia-nitrogen and total recoverable copper from Outfall 001.
5. Part II.C. of the Permit requires that the results of monitoring be submitted not later than the 10th day of the month after monitoring takes place.
6. Part II.I.3. of the Permit requires that the monitoring report shall contain an explanation for any listed non-compliance.
7. In submitting its DMRs, as required by the Permit, Riverside has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit for ammonia-nitrogen for the months November and December 2018, and January, February, and March 2019, and copper for January 2019. The DMR for the April 2019 reporting period was received late, on May 17, 2019. Riverside did not provide letters of explanation for

the exceedances for the December 2018, January 2019, February 2019, and March 2019 reporting periods. Yet in subsequent correspondence dated April 17, 2019, Riverside indicated that it believed the exceedances of ammonia were related to colder temperatures during the winter months interfered with the nitrification process. For the copper exceedances, Riverside indicated that the source is unknown and Riverside will be investigating sources of copper in the wastewater stream.

8. TRO issued Warning Letters and a Notice of Violation for the ammonia and copper exceedances as follows: WL No. W2019-01-T-1002 issued January 8, 2019; WL No. W2019-02-T-1032 issued on February 15, 2019; WL No. W2019-T-1002 issued March 13, 2019; NOV No. W2019-04-T-0002 issued April 4, 2019, and NOV No. W2019-05-T-0004 issued May 30, 2019 for the violations described in paragraph C7, above, at Riverside.
9. Riverside responded to the Warning Letters and Notice of Violation by submitting a tentative plan and schedule of corrective action to address the ammonia and copper exceedances.
10. Va. Code § 62.1-44.5 states that “[e]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to: (1) discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances....
11. The Regulation, at 9VAC25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
13. The Department has issued no permits or certificates to Shore Health Services other than VPDES Permit No. VA0027537.
14. The Warehouse Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
15. On April 11, 2019, DEQ spoke with representatives of Shore Health Services by telephone to discuss the violations and potential corrective actions. As a result of the telephone meeting, on April 17, 2019, Shore Health Services submitted to DEQ a preliminary corrective action plan to correct address non-compliance with Permit effluent limits at the Riverside Facility. The Plan includes a tentative schedule of compliance to assess the causes of the deficiencies and install corrective equipment.
16. Based on the file review and subsequent documentation, the Board concludes that Shore Health Services has violated Parts I.A, II.C, and II.I.3 of the Permit and Va. Code § § 62.1-44.5, as described in paragraphs C(7), above.

17. In order for Shore Health Services to return to compliance at Riverside, DEQ staff and representatives of Shore Health Services have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Board orders Shore Health Services, and Shore Health Services agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$10,375 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Shore Health Services shall include its Federal Employer Identification Number (FEIN) 54-0560500 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Shore Health Services shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Shore Health Services for good cause shown by Shore Health Services, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and NOV No. W2019-04-T-0002 dated April 4, 2019 and NOV No. W2019-05-T-0004 dated May 30, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, Shore Health Services admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Shore Health Services consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Shore Health Services declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Shore Health Services to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Shore Health Services shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Shore Health Services shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Shore Health Services shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance;
and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will

result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Shore Health Services. Nevertheless, Shore Health Services agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Shore Health Services has completed all of the requirements of the Order;
 - b. Shore Health Services petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Shore Health Services.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Shore Health Services from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Shore Health Services and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Shore Health Services certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Shore Health Services to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Shore Health Services.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Shore Health Services voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 20__.

Craig R. Nicol, Regional Director
Department of Environmental Quality

Shore Health Services, Inc. voluntarily agrees to the issuance of this Order.

Date: 6/27/19 By: [Signature], Vice President
(Person) (Title)
Shore Health Services, Inc.

Commonwealth of Virginia

City/County of Accomack

The foregoing document was signed and acknowledged before me this 27 day of

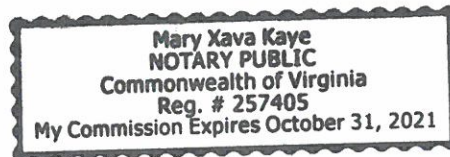
June, 2019, by John P. Peterman who is

VP/Administrator of Shore Health Services, Inc. on behalf of Shore Health Services, Inc.

[Signature]
Notary Public
257405
Registration No.

My commission expires: 10/31/21

Notary seal:



APPENDIX A SCHEDULE OF COMPLIANCE

Shore Health Services shall:

1. By September 1, 2019 provide an approvable corrective action plan for system improvements to eliminate violations of Permit effluent limits for ammonia and copper.
2. Beginning October 1, 2019, submit monthly progress reports to DEQ by the 10th of the month respectively. The monthly progress reports shall include the status of any upgrades or modifications to the system, all maintenance performed on the Facility during the preceding month period, changes in Facility operations and Riverside's compliance with the permit.
3. By February 1, 2020, complete system improvements and approved corrective actions so that the Facility consistently meets the Permit effluent limits.
4. Connect within 180 days of the availability of service collection to the Hampton Roads Sanitation District treatment system.
5. Unless otherwise specified in this Order, Shore Health Services shall submit all requirements of Appendix A of this Order to:

Regional Director
VA DEQ – Tidewater Regional Office
5636 Southern Boulevard
Virginia Beach, Virginia 23455